

Appl. No. 10/613,296  
Atty. Docket No. 9322  
Amdt. dated February 28, 2006  
Reply to Office Action of December 1, 2005  
Customer No. 27752

## **REMARKS**

### **Claim Status**

Claims 1-19 are pending in the present application. No additional claims fee is believed to be due.

### **Rejection Under 35 USC §102 Over Van Gompel et al. 6,387,085**

Claims 1, 4-7, 10-16 and 19 are rejected under 35 US §102(b) as being anticipated by Van Gompel, 6,387,085.

The Office Action states that "Van Gompel discloses an absorbent article having ... an absorbent layer 66 having zones of extensibility (col. 12, lines 17-26)."

Applicants respectfully disagree. There is no disclosure in column 12, lines 17-26 of an absorbent layer having zones of extensibility. Absorbent layer 66 of Van Gompel (which can correspond to "first absorbent layer" as claimed) is distinct and separate from the elastic elements 72 and 74, as shown in FIG. 3 of Van Gompel. The disclosure identified by the Examiner refers to the "absorbent structure 50" which includes more components than just the absorbent layer, which is identified as "66". The disclosure identified by the Examiner is silent on the extensibility of absorbent layer 66.

Accordingly, Van Gompel fails to disclose each and every element of the claimed invention of independent Claims 1 and 16.

Further with respect to Claim 5, the Office Action identifies no "second absorbent layer."

Further with respect to Claim 6, the Office Action identifies no disclosure of "substantially continuously joined to the facing layer."

Further with respect to Claim 7, the Office Action identifies no disclosure of "the facing layer has zones of enhanced extensibility." (The portion identified in the Office Action, col. 12, lines 17-26, does not appear to disclose this feature.)

Further with respect to Claim 10, the Office Action identifies no disclosure of "each said zone of extensibility defines a generally liner pattern of openings defining slits, the generally liner pattern being oriented obliquely to the longitudinal axis."

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Further with respect to Claim 11, the Office Action identifies no disclosure of "each said zone of extensibility defines a V-shaped pattern symmetric about the longitudinal axis."

Further with respect to Claim 12, the Office Action identifies no disclosure of "the facing layer comprises a topsheet and a secondary topsheet."

Further with respect to Claim 13, the Office Action identifies no disclosure of "the facing layer comprises an apertured, formed film."

Further with respect to Claim 19, the Office Action identifies no disclosure of "the first absorbent layer ... comprises at least the zones of relatively low elastic modulus."

Accordingly, the Applicants respectfully submit that the Office Action has failed to show anticipation for any of Claims 1, 16, or their respective dependent claims. Applicants respectfully request withdrawal of the 35 USC §102(b) rejection over Van Gompel.

**Rejection Under 35 USC §103(a) Over Van Gompel et al. 6,387,085**

Claims 2, 3, 17, and 18 are rejected as being unpatentable over Van Gompel 6,387,085.

As shown above, Van Gompel fails to disclose each and every limitation of the claimed invention of Claim 1 or Claim 16, from which claims 2, 3, 17 and 18 depend.

According to MPEP 2143, for a finding of prima facie obviousness, in addition to any new limitations introduced by the rejected claims, Van Gompel must first disclose each and every element of independent Claims 1 and 16. As shown above, Van Gompel fails to do so.

Moreover, the Office Action has provided no motivation why one skilled in the art might wish to modify Van Gompel to have the missing claimed limitations.

Because every element of the claimed invention is not disclosed in Van Gompel, and because the Office Action provides no motivation to modify Van Gompel to have the

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limitations of the independent claims as well as the independent claims rejected herein, Van Gompel alone can not be the basis for a finding of prima facie obviousness.

Accordingly, because the Office Action has failed to make out a prima facie case of obviousness, Applicants respectfully request withdrawal of the 35 USC §103(a) rejection of Claims 2, 3, 17 and 18.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-19 is respectfully requested.

Respectfully submitted,

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Date: 2/28/06  
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